IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6847 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? 1 to 5 NO

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SUGARABEN AHMEDBHAI CHAUHAN - Petitioner(s)

Versus

REGIONAL PROVIDENT FUND COMMISSIONER (II) & 1 - Respondent(s)

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Appearance :

BALKRISHNA ACHARYA for Petitioner(s) : 1,
MR NIRAL R MEHTA for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 16/02/2006

CAV JUDGMENT

1. Invoking Article 226 of the Constitution, the widow of a deceased employee has filed this petition for claiming family pension under the Employees' Pension Scheme, 1995 (“the Scheme” for short) made under the provisions of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (“the Act” for short).

2. The petitioner's husband was a workman working in a unit of Gujarat State Textile Corporation Ltd. and a member of the Employees' Provident Fund Scheme. According to the petition, the husband of the petitioner had opted for family pension scheme on 25.4.1996 and, after his death, the petitioner had made a representation for grant of family pension, but the same was denied by the impugned order dated 2.7.2004 on the ground that her late husband had withdrawn his family pension funds in September, 1994 and died on 18.1.2000. It is explained in that order that she was not entitled to family pension because, as per Para 1.4.3 (v) of the Employees' Provident Fund Manual, if the member had availed the withdrawal benefit during 1.4.1993 to 15.11.1995, the family would not be entitled to pension in the event of death of the member on or after 16.11.1995.

3. According to the affidavit-in-reply submitted on behalf of the respondents, a member, who wanted to avail the benefit of the Scheme, had to opt for the said scheme and, in turn, had to deposit before his death the amount together with interest which he would have received under the old Scheme. In the facts of the present case, the member had only opted for the new Scheme of 1995, but had never returned the benefits which were received by him

under the old Scheme of 1971. The husband of the petitioner had already withdrawn the amount due under the old Scheme and had never become a member of the Scheme of 1995. He had also not re-deposited the withdrawn amount with interest till his death. It was only after seven years of the deemed date that such amount was sought to be unilaterally repaid on 11.4.2004. However, the case of the petitioner was referred to the Head Office of the respondent, but it was rejected on the grounds that the requirements of Para 6 read with Paras 7 and 17 of the Scheme were not fulfilled by the member till his death.

4. The Employees' Pension Scheme, 1995, made in exercise of the powers conferred by Section 6-A of the Employees Provident Funds & Miscellaneous Provisions Act, 1952, provides in Para 3 for creation of the employees' pension fund and, in Para 6, for its membership. Para 7 of the Scheme provides for the option to be exercised by the member for the employees who ceased to be a member of the Employees' Family Pension Scheme, 1971 between 1.4.1993 and 15.11.1995 and for deemed exercise of such option in case the member has died between 1.4.1993 and 15.11.1995. Under the provisions of Para 17 of the Scheme, the members who are alive and who ceased to be members of the old Scheme of 1971 between 1.4.1993 and 15.11.1995 have the option to join the Scheme of 1995 by returning the amount of withdrawal benefit

received, if any, together with interest @ 8.5% per annum from the date of payment of such withdrawal benefit, to receive monthly pension as per the provisions of the Scheme.

5. In the facts of the present case, the husband of the petitioner had withdrawn his family pension fund amount in September, 1994 and died on 18.1.2000 without ever effectively exercising the option, as aforesaid, under the Scheme. Thereafter, the widow could not have exercised the option after seven years of the withdrawal and four years after the death of her husband, under any provision of the Scheme. Therefore, the claim of the petitioner for availing the benefit of the Scheme was not legally tenable. The instances of other persons alleged to have been granted such benefit have been distinguished on facts by the respondents.

6. In the facts and for the reasons discussed hereinabove, the petition appears to be misconceived and without any legal basis and, therefore, rejected. Notice is discharged with no order as to costs.

Sd/-

(D.H.WAGHELA, J.)

(KMG Thilake)